

The complaint

Miss U says Next Retail Limited (“Next”) irresponsibly lent to her. She has requested that the interest and late payment charges she paid on the account she had be refunded.

What happened

This complaint is about a catalogue shopping account provided by Next to Miss U. The account was opened in October 2012 with Miss U being given an initial credit limit of £150. This limit was increased several times reaching, at its height, a credit limit of £5,000 in May 2015.

Miss U says Next ought not to have allowed her to open the account with its opening credit and then gone on to increase her credit limit, given her financial history.

Our adjudicator partially upheld Miss U’s complaint and thought that Next ought to have realised that Miss U wasn’t in a position to sustainably repay any further credit on the account by February 2015.

As Next has disagreed with what they said the complaint has been passed to me for a decision.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

After reviewing all of the information provided in this complaint, I intend to partially uphold Miss U’s complaint. I explain why below.

Next needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss U could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer’s income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Next should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer’s income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Our adjudicator set out in some detail why he thought Next shouldn't have provided Miss U with any additional credit from February 2015. Next didn't agree with what our adjudicator said, pointing out that the Ms U's spending on the account didn't reach the level of the previous credit limit until late 2017.

Our adjudicator thought that the early increases to the credit limit on the account were not examples of irresponsible lending. Both parties have seen that assessment and Miss U has not raised any objection to those findings. So, in the absence of any argument about that, I'll address the later increase that I think was an example of irresponsible lending.

Before February 2015 there were times when Next increased the credit limits on the account. I don't think that the checks were always proportionate at those times. But I haven't seen sufficient evidence to think that better enquiries would have caused Next to think the initial credit limit or the credit increases before February 2015 were unaffordable.

The account activity history before January 2014 is no longer available. So I can't comment on the way Miss U was managing her account then. And since Miss U hasn't been able to provide us with information about her financial situation covering the period she had the account, I can't comment on how sustainable or otherwise the earlier credit limit increases might have been and whether Next ought to have realised much sooner that further lending was likely unsustainable, or otherwise harmful. But I do agree with our adjudicator that the credit limit increase from £354 up to £1,000 in February 2015 ought not to have been granted. I will explain why.

Throughout the life of the account but particularly before the account went into arrears, there were times when Next increased the credit limits on the account. But there were also times when the credit limit was reduced. I think there was a pattern of lending that ought to have put Next on notice that putting up the credit limit in February 2015 was unsustainable as Miss U would not have been able afford to repay what she was being lent in a sustainable manner.

Like our adjudicator, having reviewed the available account history, I've seen that in the months immediately prior to the February 2015 increase, between August and December 2014, Miss U's credit limit was reduced from the previous credit limit of £3,000 several times. This included an increase in September 2014 from the previously-reduced limit (from £506 to £750) but in the following three months the limit first went down to £386 and then £350 and was then very slightly increased to £354. I've also seen that in January 2015 the account was briefly suspended due to two missed payment that Miss U made within a few days.

I understand and appreciate the points that Next have made in response to our adjudicator's view. But the question I need to ask myself is whether Next acted appropriately and

proportionately in granting a significantly large credit limit in these circumstances. Having already reduced Miss U's credit limit due to concerns about her financial situation, I think there was a real risk that she was beginning to struggle and the missed payments further support that. So I agree that Next shouldn't have granted another credit limit increase, particularly one of that size, given the uncertainties about Miss U's ability to manage it without getting into further difficulty. And whilst Miss U went on to reduce the total balance of the account and her utilisation of the available credit was low in the following months, I don't think that alters the position that the credit limit ought not to have been raised to £1,000. I think there was a real possibility that Miss U would have found it challenging to repay a balance at that level, whilst at the same time having to meet her daily living expenses and any other committed expenditure. I accept that Miss U didn't increase her balance beyond the previous limit of £354 until December 2017, but the position remains that I think she lost out financially after that as a result of the increase in February 2015 and subsequent credit limit increases.

It follows that I think that Miss U lost out because Next provided her with further credit from February 2015 onwards. Next should therefore put things right.

Putting things right – what Next needs to do

- Rework Miss U's account to ensure that from 15 February 2015 onwards interest is only charged on balances up to the total credit limit of £354, including any buy now pay later interest, (being the credit limit in place before that date) to reflect the fact that no further credit limit increases should have been provided. All late payment and over limit fees should also be removed; and
- If an outstanding balance remains on the account once these adjustments have been made Next should contact Miss U to arrange an affordable repayment plan for these accounts. Once Miss U has repaid the outstanding balance, it should remove any adverse information recorded on Miss U's credit file from 15 February 2015 onwards for each account.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss U, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. Next should also remove any adverse information from Miss U's credit file from 15 February 2015 onwards.†

†HM Revenue & Customs requires Next to take off tax from this interest. Next must give Miss U a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out, I am partially upholding Miss U's complaint. Next Retail Limited should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 10 January 2023

Michael Goldberg

Ombudsman